

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3023 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CANBANK MUTUAL FUND

Versus

ATULKUMAR BHUPATRAI DAVADA

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Appearance:

MR RD DAVE for Petitioner

Respondent No. 1 absent.

Mr. H.L. Jani, A.P.P. for Respondent No. 2

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/11/2000

## ORAL JUDGEMENT

Heard learned Advocate Mr. R.D. Dave for the petitioner.

Rule. Learned A.P.P. Mr. H.L. Jani waives service of rule on behalf of the respondent no.2. The respondent no.1 who was initially served by notice issued vide earlier order has remained absent.

The petitioner has prayed to quash the complaint, copy of which is produced at Annexure "A" under Section 482 of the Code of Criminal Procedure, 1973 ( hereinafter referred to as "the Code"). The respondent no.1 has averred and alleged in Criminal Case no.8325/99 filed in the Court of ld. Chief Judicial Magistrate, Bhavnagar as under:

That the respondent is a Public Company and had issued public issue on 25-11-1991. That as per instructions given in the form, the investment made for 90 months in the Company would fetch the return to the extent of three times of the amount invested. That following the said instruction, the respondent no.1 has invested Rs.30,000/- by applying for 3000 shares and he expected that on 25-3-1998 when 90 months were over, the respondent no.1 should have Rs.90,000/-. However, the petitioner had paid only Rs.52,440/- by cheque dated 16-7-1999 and has failed to pay the remaining amount of Rs.37,560/- for which a registered notice was given. That the petitioner having failed to reply the same or comply with the demand has committed the offences made punishable under Secs.406 and 420 of the Indian Penal Code.

It appears from the record that the learned Chief Judicial Magistrate, Bhavnagar after recording the verification of the present respondent no.1 as complainant of the said complaint has issued process against the present petitioner. The petitioner has challenged the said order of issuing process and the complaint itself.

The learned Advocate for the petitioner Mr. R.D. Dave has taken me through the prospectus issued by the Can Bank Mutual Fund produced on record vide Annexure "B". It is clearly stated therein that the object of the petitioner is to achieve the maximum profit by making investment and to earn more than 14.90 percent interest which would amount to three times the return on

investment. However, a caution is also given by way of important instructions in the prospectus that risk perceived by the Trustees investing of Cantriple + funds in securities like equity shares etc. is prone to volatility, potential or otherwise and limited liquidity of securities market and also political and economic considerations.

It is submitted on behalf of the petitioner that despite the best efforts made on behalf of the petitioner, as per the scheme sanctioned by the Reserve Bank of India, the profit earned on investment by the petitioner-bank is proportionately distributed to the shareholders and accordingly the petitioner having invested for 3000 shares has been paid due amount of Rs.52,440/-. Demand notice of the petitioner to claim Rs.37,560/- as the remaining amount being false and frivolous was not complied with, as at no point of time, the petitioner-Company had promised the respondent no.1 as a shareholder, to pay the amount to the extent of three times of the share purchased by him. That it was the ultimate goal of the Company to achieve maximum profit for its shareholders by making appropriate investment in the market but if the profit earned by the petitioner-Company is not to the extent of three times of the investment of the shareholders, it cannot be said that the petitioner has misappropriated the said amount or has committed breach of trust or has earned wrongful gain by causing wrongful loss to the shareholders.

In the instant case, the prospectus produced at Annexure"B" clearly suggest that investment to be made by the petitioner-Company was subject to the risk perceived by the trustees. That it is a public Company which has undertaken the investment scheme under the supervision and approval of the Reserve Bank of India, and thereby, the allegations made in the complaint by the respondent no.1 against the petitioner ex facie appears to be false and fantastic. That by the instructions stated in the document of prospectus, no offence can be said to have been committed by the petitioner, and as such, impugned complaint is not tenable at law. Similarly, the order passed by the learned Chief Judicial Magistrate having been passed without considering the impact of the instructions stated in the prospectus, is also contrary to law and deserves to be quashed and set aside.

On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 8-12-1999 passed by the ld. Chief Judicial Magistrate, Bhavnagar, in the matter Criminal Case no.8325/99 issuing summons to

the present petitioner for the offence made punishable under Secs.406, 420, IPC is hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi, J.

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